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regarded by the jury as matter of evidence to the benefit of which the party is entitled." This refused instruction is practically the same as the court upheld in the *Coffin* case and the ruling in the *Agnew* case would indicate that the presumption of innocence is not evidence but only a substitute for it. A presumption would not seem, therefore, to be evidence in its true sense. The jury cannot weigh a presumption nor can the court tell them what weight they should give it, for there is nothing to guide the court in this matter.

W. R. R.

RECENT LABOR LEGISLATION.—Modern ideas upon the value of labor legislation tending to promote the public health and welfare are exemplified in the recent cases of *People v. The Klinck Packing Co.*, 52 N. Y. L. J. 1925, 47 Chi. Leg. News 233, and *Miller v. Wilson, Sheriff*, 35 Sup. Ct. —. In the former case the New York Court of Appeals upheld the constitutionality of the "one day of rest in seven" law passed by the legislature in 1913. (Laws 1913, Ch. 740) which provided in substance that every employee in any factory or mercantile establishment should be allowed "at least twenty-four consecutive hours of rest in every seven consecutive days", with certain exceptions. At first sight this would not seem so restrictive of personal liberty as Sunday laws, which have been universally upheld (*Hennington v. Georgia*, 163 U. S. 229; *Petit v. Minnesota*, 177 U. S. 164) in that no special day upon which work is forbidden is set aside; but these laws have had the added religious element and the sanction of centuries pressed as reasons for their validity. The present law is entirely free from such elements, which would seem to carry it a step further than the Sunday laws. The decision is particularly interesting in view of the language in some prior New York cases on kindred points. See *In the Matter of Jacobs*, 98 N. Y. 98 and *People v. Williams*, 189 N. Y. 131. In the latter case the court said, in holding invalid a law prohibiting women from working in factories between 9 p. m. and 6 a. m., and commenting upon the frequency of such regulative laws, "it behooves the court firmly and fearlessly to interpose the barriers of their judgment". In the *Klinck* case the court says, "The doctrine that personal liberty must yield to what is supposed to be the public welfare has not waned any during recent years". It seems that seven years can change a viewpoint materially. In *Miller v. Wilson*, supra, the law provided that no female in certain enumerated employments should work more than eight hours in any one day and no more than forty-eight hours in any one week. (Calif. Stats. 1911, p. 473). The Supreme Court had numerous authorities upon which to base the decision and which argue along the same lines of reasoning, in *Muller v. Oregon*, 208 U. S. 412; *Hawley v. Walker*, 232 U. S. 718, and *Riley v. Massachusetts*, 232 U. S. 671, all upholding practically similar legislation; but here the available number of working hours in any one week is considerably lower than in any law to date, and still the regulation remains within legislative discretion. This alone, when considered in view of the language in *Lochner v. New York*, 198 U. S. 45, shows the adaptation of the judicial mind to the changes in industrial and commercial conditions which have arisen in a decade. Undoubtedly either the *Klinck* case or the

Miller case could have been decided the other way upon faultless logic and well defined legal principles, but in both cases the courts have looked more at modern conditions and the needs which have arisen as exemplified by a contrary course of procedure, and have made this the basis of their decisions. This in itself refutes the criticisms urged against the law that it is backward in adopting new ideas of social betterment, and that it applies eighteenth century principles to twentieth century conditions. Under the conditions which existed at the time *Lochner v. New York* and *People v. Williams* were decided, the decisions could be justified. Certainly, today, it can not be said that the judicial mind has been slow in changing its attitude for the more modern and better view.

M. K. B.

CONDITIONS PRECEDENT TO STOCKHOLDER'S SUIT IN FEDERAL COURTS.—A stockholder cannot maintain a suit in equity in his own right based on acts of the defendant alleged to have caused injury to him by injuring the property or business of the corporation, thereby depreciating the value of his stock, the right of such action being in the corporation (*Kelly v. Mississippi River Coaling Co.*, 175 Fed. 482) unless he shows compliance with the federal equity rule (*Gage v. Riverside Trust Co.*, 156 Fed. 1002) for the equity rule is jurisdictional in character. (*City of Chicago v. Mills*, 204 U. S. 321.).

The former equity rule (Rule 95) provided not only that the bill must allege "that the suit is not a collusive one to confer upon a court of the United States jurisdiction of a case of which it would not otherwise have cognizance," but that "it must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and if necessary, of the shareholders, and the cause of his failure to obtain such action." The new rule (Rule 27, 198 Fed. xxv.) adds to this provision the words—"or the reasons for not making such effort."

The courts have interpreted these rules rather strictly and, with but one exception, have required almost a literal compliance therewith. In *Macon D. & S. R. Co. v. Shailer*, 141 Fed. 585, the court held that where the stockholder sought to set aside a sale of property by the corporation upon the ground of fraud, he must not only set out in his bill the fraud on the part of the president and directors but also the efforts made by him and the cause of his failure to secure action by the corporation. And in *Poor v. Iowa Central Ry.*, 155 Fed. 226, it was held that merely alleging a demand upon the directors and their refusal was not sufficient but that the manner and reason for their refusal must also be disclosed in the bill. To the same effect are: *Howes v. Oakland*, 104 U. S. 450, *Corbus v. Gold Mining Co.*, 187 U. S. 455.

But where the stockholder's bill alleges demands upon the directors of a corporation to refuse to comply with a statute alleged to be unconstitutional and that such demands were refused because of the severe penalties imposed upon such officers for failure to obey requirements of the statute, it amounts to a sufficient compliance with the provisions of the rule. *Perkins v. Northern Pacific Ry.*, 155 Fed. 445, *Ex Parte Young*, 209 U. S. 123.